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# Report of the Working Group on the Universal Periodic Review*

## Republic of Korea

### Addendum

### Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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1. The Republic of Korea has been a fervent advocate of the Universal Periodic Review (UPR) that was launched in 2008 by the Human Rights Council to facilitate mutual review of the human rights situations among the member states and to protect and promote human rights.

2. In the course of drafting the two previous UPR reports and of coordinating, implementing and monitoring the entire UPR process, the Government has been making efforts to build governance in human rights with engagement from both the government ministries and civil society. This report has been prepared in compliance with the procedure to be presented to the 37th Human Rights Council.

3. In January 2018, the Government held a public hearing where civil society groups were invited to exchange opinions over the recommendations from the constructive dialogue in the UPR, including the noted ones, and the public hearing brought together diverse perspectives on whether to support or note the recommendations. Subsequently, the Government sought the opinions of the relevant ministries, which are in the position of deciding on the acceptance of and implementing the recommendations, and determined its final position, which is presented as in this report.

4. Setting aside 85 recommendations which the Government supported and three that were noted in the 28th session of the UPR Working Group, the Government reviewed a total of 130 recommendations. The Government supports 36 and notes 94 recommendations. This is illustrated in this present report.

5. Of the recommendations the Government received, some recommendations were incompatible with the domestic law and conditions, some already in effect, and some noted because of social controversy or discrepancy with the position of the Government, which hinders their immediate adoption.

6. However, the UPR mechanism embodies the shared will of the international community by guiding the state under review to "note" rather than "reject" the recommendations, thereby obliging every member state to pay heed to the recommendations and fulfil its responsibility for protecting and promoting human rights in compliance with the international human rights norms.

7. Consequently, even when some of the recommendations are not accepted at the moment or are noted because of their incompatibility with the domestic legal system and social circumstances, the Government of the Republic of Korea will always remain committed to its effort to take into account the concerns and expectations of the member states about its human rights situations, thereby contributing to not only improvement of the domestic human rights situations but also global efforts for promoting human rights, thus becoming a responsible member of the international community.

## International obligations and cooperation with international human rights mechanisms and bodies, national human rights framework

8. The following recommendations enjoy the support of the Republic of Korea: **132.1–132.3, 132.9, 132.10 and 132.19-132.23**.

9. **Recommendation 132.20.** The Government expects to withdraw its reservation on Article 22 of the International Covenant on Civil and Political Rights, once an in-depth discussion and specific legislative efforts take effect.

10. The following recommendations are noted: **132.4-132.8, 132.11-132.18, 132.24** and **132.25**.

11. **Recommendation 132.16.** The Republic of Korea already ratified the Rome Statute, which provides for heavier and more systematic punishments for war crimes and crimes against humanity compared to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The ROK will continue to examine the effects of acceding to the Convention.

12. **Recommendation 132.17.** As for the ratification of the Kampala amendments to the Rome Statute on the crime of aggression, a thorough review needs to be carried out with regard to the legal effect of the most recent resolution adopted at the Assembly of State Parties and the scope of the ICC jurisdiction.

13. **Recommendation 132.18.** Considering that the Treaty on the Prohibition of Nuclear Weapons stands contrary to a gradual nuclear phase-out which takes into account the national security situation of individual states, the ROK voted against the resolution concerned and did not attend the conferences.

14. **Recommendations 132.4-132.8, 132.11-132.15.** Taking into account a number of factors, such as the discrepancy between the treaties concerned and domestic law, the need for enactment or amendment of relevant laws and impact of ratification, the ROK will continue to consider the ratification of the international treaties to which it has not acceded.

## Equality and non-discrimination

15. The following recommendations enjoy the support of the Republic of Korea: **132.28–132.31, 132.33, 132.34, 132.37, 132.41, 132.42, 132.46, 132.47 and 132.49–132.55.**

16. **Recommendations 132.30 and 132.46.** The Government expends effort to prohibit discrimination against and protect the rights of non-citizens pursuant to the *Framework Act on Treatment of Foreigners Residing in the Republic of Korea*. The Government included policies to stop xenophobia and racism in the third Basic Plan for Immigration Policy.

17. The following recommendations are noted: **132.26, 132.27, 132.32, 132.35, 132.36, 132.38–132.40, 132.43–132.45, 132.48 and 132.56-132.68.**

18. **Recommendations 132.26, 132.27, 132.32, 132.35, 132.38–132.40, 132.43, 132.57–132.62, 132.64**, and the former parts of 132.36, 132.44 and 132.65. The Government has devoted considerable legislative efforts to prohibit discrimination through the Constitution and 90 other legislations. Meanwhile, considering the controversy over the prohibited grounds of discrimination, the enactment of the general anti-discrimination law, which provides general remedial procedure for the victims of discriminatory acts, requires considerable examination and opinion-gathering process to reach public consensus regarding the matter. Furthermore, imposing criminal punishment for discriminatory acts requires a careful review.

19. **Recommendations 132.66–132.68**, and the latter parts of **132.44, 132.45** and **132.65**. Cases regarding whether or not the consensual same-sex activities is punishable under Article 92-6 of the *Military Criminal Act* and its constitutionality are pending with the ordinary court and the Constitutional Court, and the Government will conform to the final rulings of the judicial branch.

20. **Recommendations 132.48 and 132.56**. Establishing racial discrimination, xenophobia and hate speech as separate elements constituting criminal offence may result in violation of the rule of clarity in criminal law. In addition, the need for a separate law should be carefully examined with a thorough review of the current criminal law in that the motivation of a crime is considered in the determination of sentence and that it is hard to conclude that there is an absence of legislative provisions to punish hate speech.

21. **Recommendation 132.63.** The ROK deems it inadequate for a government to prohibit conversion therapy conducted in the private sphere.

## Development and human rights

22. **Recommendation 132.69** enjoys the support of the Republic of Korea.

23. The Government adopts a human rights-based approach with respect to development projects in an effort to uphold the spirit of the *Framework Act on International Development Cooperation*.

## Right to life, liberty and security, and administration of justice, including impunity and the rule of law

24. The Government notes **Recommendations 132.70–132.93**.

25. **Recommendations 132.70–132.89.** The abolition and practice of the death penalty are of significant importance as they are associated with the essence of criminal law, requiring comprehensive review of the public opinion, legal perception and the function of death penalty in criminal policy.

26. **Recommendation 132.90.** The ROK adheres to strict application of the *National Security Act* in line with the judgements of the Supreme Court so that abusive or arbitrary application of the law that results in an undue restraint on a person's liberty shall not be allowed. Further, there are no legal grounds to arbitrarily release any offender of the *National Security Act* who has been detained in accordance with due process of law.

27. **Recommendation 132.91.** Under the law, a crime of violence is defined as using physical force on a person's body and a crime of cruel act as any action that may inflict psychological or physical pain. Thus, any acts that might constitute acts of torture are already subject to criminal punishment by the current criminal legislation.

28. **Recommendation 132.92.** Under the current law, marital rape is recognized as a criminal offense as the object of the crime of rape is defined as a person, which in itself includes a spouse.

29. **Recommendation 132.93.** There is no impunity for crimes committed by the United States Forces Korea (USFK) and they are subject to criminal punishment pursuant to the Status of Forces Agreement and the relevant law.

## Fundamental freedoms and the right to participate in public and political life

30. **Recommendation 132.106** enjoys the support of the Republic of Korea.

31. The following recommendations are noted: **132.94–132.105 and 132.107–132.111.**

32. **Recommendations 132.94–132.105.** The Government will conform to the decision of the Constitutional Court's ruling on the pending case on the punishment of the conscientious objectors. The unique security landscape of the Korean Peninsula and the importance of ensuring the equity of military service demand an in-depth discussion based on public consensus in introducing alternative services for those who refuse to serve their military duties as enlisted or conscripted soldiers on the grounds of freedom of thoughts, conscience or religion.

33. **Recommendations 132.109–132.111**, and the latter part of **132.108**. The purpose of the *National Security Act* (NSA) is to safeguard basic order of liberal democracy of the ROK, which is under unique security conditions as a divided nation. The Government adheres to the strict interpretation and application of the Act, limiting its application to where there is a clear danger that may threaten the existence and security or the liberal democratic order of the nation. The Government complies with due process of law to prevent human rights abuses that may occur in the course of investigation and interrogation, and guarantees the right to freedom of expression to the maximum possible extent. Moreover, there have been no incidents of undue prosecution and conviction of an individual who has legitimately exercised the right to freedom of expression and the right to freedom of association. The ROK will continue to ensure strict interpretation and careful application of the NSA, and the complete observance of due process of law.

## Prohibition of all forms of slavery and the rights of women and children

34. The following recommendations enjoy the support of the Republic of Korea: **132.112, 132.113** and **132.122**.

35. **Recommendation 132.113.** A scheme to expand the ratio of female legislators has already been put in place. The Political Reform Special Committee of the National Assembly agreed on revising the *Public Official Election Act* to strengthen the effectiveness of the scheme which requires that a certain number of female candidates be recommended in the election of proportional representatives for the National Assembly.

36. The following recommendations are noted: **132.114–132.121, 132.123 and 132.124.**

37. **Recommendations 132.114 and 132.115.** Whether to abolish the crime of abortion or to extend the list of circumstances where abortion is permitted is a matter of significant importance as it is associated with the right of an unborn baby to its life as well as the right of a pregnant woman to her life, body and self-determination. This will be decided by taking into account the Constitutional Court's decision on the pending case of the constitutionality of the crime of abortion, legislative examples of other countries, and opinions of all corners of society.

38. **Recommendations 132.116, 132.117.** Forced sterilization of women with disabilities is prohibited by law in the ROK, and no such practice is carried out.

39. **Recommendations 132.118–132.121, 132.123, and 132.124.** When children of non-citizens are born in the ROK, their parents can register the child's birth via the embassy of their country of origin. The ROK permits the children of non-citizen parents to be registered as a foreigner and to remain in the ROK when the non-citizen parents are unable to register the child's birth through the embassy because they are recognized refugees, seeking refugee status, or given humanitarian status, provided that birth certificates issued by hospitals prove the biological relationship between the child and his/her parents.

## Migrants, refugees, asylum seekers and internally displaced persons

40. The following recommendations enjoy the support of the Republic of Korea: **132.127-132.129.**

41. **Recommendation 132.128.** The ROK does not impose restrictions on the renewal of a work visa of migrant workers on the grounds of workplace change. Migrant workers who are legally residing in the ROK can apply for the extension of their work visa regardless of their workplace change history.

42. The following recommendations are noted: **132.125, 132.126** and **132.130.**

43. **Recommendation 132.126.** The ROK applies the laws on labour relations without discrimination to the migrant workers with work permits and works on improving housing conditions of migrant workers. Furthermore, the Government provides migrant workers irrespective of their status with redress for overdue wages and industrial accidents pursuant to the *Labour Standards Act* and the *Industrial Accident Compensation Insurance Act*. Meanwhile, through the enforcement of the *Refugee Act* that took effect on 1 July 2013, the Government ensures the rights of refugee applicants to receive livelihood and housing subsidies, healthcare support, and education. Although guaranteeing full support of housing, healthcare and educational service irrespective of the status of sojourn is a goal hard to achieve at the moment, the Government will commit to expanding the scope of benefits granted to migrants.

44. **Recommendation 132.130.** The Government is committed to ensuring the right to education for unregistered children by refraining from cracking down until they finish their education, deferring the decision of deportation, and excluding the children aged less than

14 years from protective custody. However, the ROK finds it difficult to introduce a complete ban on protective custody of unregistered children, as these children may possibly be exploited to extend or gain permission of legal stay, and also because of a need to address the case of criminal conduct involving unregistered children.